INTERIOR BOARD OF INDIAN APPEALS

Gavilan Petroleum, Inc. v. Acting Phoenix Area Director, Bureau of Indian Affairs

25 IBIA 300 (04/28/1994)

Related Board case:
32 IBIA 191

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

GAVILAN PETROLEUM, INC., Appellant	:	Order Reversing Decision and Remanding Case for Consideration on the Merits
v.	:	
ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 93-117-A
	:	April 28, 1994

Appellant Gavilan Petroleum, Inc., seeks review of a July 2, 1993, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (BIA; Area Director), summarily dismissing appellant's appeal from a March 30, 1993, letter from the Superintendent, Uintah and Ouray Agency, BIA (Superintendent), demanding payment of royalties in connection with certain oil and gas leases on the Uintah and Ouray Reservation in Utah. For the reasons discussed below, the Board of Indian Appeals (Board) reverses that decision and remands this matter to the Area Director for consideration on the merits.

Ten oil and gas leases are at issue in this appeal. The leases were entered into in February through April 1948, and are located in various sections of T. 1 S., R. 1 E., Uintah Special Base and Meridian, Utah. Lease Nos. 5145, 5160, 5185, 5206, 5226, 5247, 5248, 5249, and 5251 cover approximately 395 acres of allotted land. Lease No. 5242 covers approximately 4,085 acres of tribal land.

There is no dispute that the ten leases have all been committed to the Green River Participating Area of the Roosevelt Unit since the 1950's, or that appellant has been the Designated Operator for this participating area since 1988. There is also no dispute that Caloco Energy, Inc., was operating wells within the participating area.

By memorandum of March 12, 1993, the Minerals Management Service (MMS) notified the Area Director that Caloco owed royalties of $6,099.97 in regard to the nine allottee leases. MMS stated that an additional $1,762.67 was outstanding from a prior demand for payment of overdue royalties, and requested the Area Director's assistance in collecting a total of $7,862.64.

On March 30, 1993, the Superintendent demanded payment from appellant:

> In a letter dated October 14, 1992, it was indicated that on various conferences with * * * [a] BIA Petroleum Engineer and [the President] of [appellant], as the designated operator, [appellant] confirmed the responsibility of the various oil and gas leases within the Roosevelt Unit.
>
> On March 12, 1993, we were notified by [MMS] of outstanding amounts totaling $7,862.64 from Caloco Energy. [Appellant] assumed responsibility as the Designated Operator, therefore, we

> are demanding payment from [appellant] on behalf of Caloco Energy. Be advised that MMS will calculate interest on late payments.
>
> You are hereby notified that you are required to submit payment in the amount of $7,862.64 within thirty (30) days from receipt of this letter. Failure to do so will result in our sending notice to [your] Bank for seizure of the referenced Letter of Credit by the Superintendent as required by Regulations. By copy of this letter, [your] Bank, and the Phoenix Area Director are hereby notified of the intended action of the Bureau of Indian Affairs. [Emphasis in original.]

(Superintendent's Letter at 1).

Appellant appealed this letter to the Area Director, who, on July 2, 1993, issued the decision under appeal. The decision states in relevant part:

> You have appealed a decision of the Superintendent dealing with a failure to pay royalty exclusively concerning nine allottee leases. Your appeal, however, is predicated upon a tribal lease (Tribal Lease No. 1-109-Ind-5242) which was not considered in the decision. See the March 12, 1993, letter from [MMS] attached with the Superintendent's March 30, 1993, decision.
>
> Because your appeal concerns a lease not under consideration by the Superintendent, it is denied. [Emphasis in original.]

(Area Director's Decision at 1).

Appellant appealed this decision to the Board, and filed an opening brief. Counsel for the Area Director informed the Board that he could not locate a copy of appellant's brief in his files. Although counsel was listed on appellant's certificate of service, the Board transmitted a copy of the brief to counsel, who then filed an answer brief. When the Board began consideration of this appeal, it discovered that counsel for the Area Director had not served counsel for appellant with the answer brief, although appellant had been served. The Board ordered service to be made on counsel, and appellant subsequently filed a reply brief.

Appellant's primary argument is that its appeal should not have been summarily dismissed, but it should have been granted an opportunity to amend its notice of appeal pursuant to 25 CFR 2.17(b), which provides:

> An appeal under this part may be subject to summary dismissal for the following causes:
>
> (1) If after the appellant is given an opportunity to amend them, the appeal documents do not state the reasons why the appellant believes the decision being appealed is in error, or the reasons for the appeal are not otherwise evident in the documents.

Appellant contends that the Superintendent's March 30, 1993, demand letter did not indicate what leases were at issue, and did not include a copy of MMS's March 12, 1993, memorandum. Appellant argues that, based on past demands for payment, which had related only to the tribal Lease No. 5242, it reasonably believed that the March 30 demand also related to that lease, and did not realize that the demand related to the nine allottee leases until after receiving the Area Director's July 2, 1993, decision, although it admits locating a copy of MMS's March 12, 1993, memorandum separately in its files. Appellant contends that it did not have notice of the matters in dispute.

The Area Director states that MMS's March 12, 1993, was attached to the Superintendent's March 30, 1993, demand for payment, and that

> [t]he true basis for the Area Director's decision to deny the appeal was that there had been no appeal from any action of the Superintendent.
>
> If the Appellant had appealed a decision based upon the nine Indian allottee leases which were the subject matter of the Superintendent's July [sic] 30, 1993, Demand Letter then 25 C.F.R. § 2.17 might have some applicability. We believe because there was no appeal from the subject matter of the Superintendent's decision that 25 C.F.R. § 2.17 is not applicable. The appellant knew or should have known the subject matter of the Demand Letter. He made no appeal from any action of the Superintendent. Appellant's appeal to this Board should be denied on that ground.

(Answer Brief at 6).

The Board finds the argument set forth in the Area Director's answer brief to be disingenuous at best. By letter dated April 29, 1993, appellant wrote to the Area Director. The subject of that letter is stated to be "NOTICE OF APPEAL and STATEMENT OF REASONS of Gavilan Petroleum, Inc. for Demand of Payment and Seizure of Letter of Credit." The first paragraph of the letter states: "Reference is made to that certain letter dated March 30, 1993 ("demand letter") from [the Superintendent] demanding payment of $7,862.64 and threatening seizure of [appellant's] Letter of Credit. A copy of the demand letter is attached hereto as Exhibit 'A.'" The copy of this letter in the administrative record provided to the Board by the Area Director contains a copy of the demand letter as Exhibit A.

The Board concludes that appellant filed a timely notice of appeal from the Superintendent's decision.

Appellant's statement of reasons to the Area Director clearly evidences its belief that the lease under which the Superintendent was demanding payment was tribal Lease No. 5242. After reviewing the administrative record and the filings of the parties, the Board finds no reason not to believe appellant's statements that no copy of MMS' March 12, 1993, memorandum was attached to the Superintendent's March 30, 1993, demand letter, and that appellant did not connect the copy of MMS' memorandum it received separately and the demand letter until after the Area Director dismissed its appeal.

An administrative agency has a responsibility to inform persons against which it proposes to take action of the basis and the reasons for its decision. Bowen v. American Hospital Association, 476 U.S. 610, 626-27 (1986). An elemental part of this responsibility is to clearly and unequivocally inform that person of the subject matter underlying its decision.

The Board concludes that appellant was not given adequate notice of the leases under which BIA demanded payment, and was improperly denied the opportunity provided in the regulations to amend its notice of appeal and statement of reasons before its appeal was summarily dismissed. Accordingly, the Board reverses the Area Director's July 2, 1993, decision and remands this matter to the Area Director for consideration on the merits. 3/

The administrative record contains a July 22, 1993, letter from the Superintendent to appellant demanding payment of an additional $26,719.43 in royalties pertaining to the nine allottee leases. Mat letter indicates that a total of $34,582.07 is now sought, which amount specifically includes the $7,862.64 sought in the present appeal. According to its reply brief, appellant's appeal to the Area Director from this derision was still pending as of March 22, 1994, the date counsel signed the brief. 1/ It would appear that these two appeals should be consolidated before the Area Director, and for appeal purposes. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's July 2, 1993, decision is reversed and this matter is remanded to him for consideration on the merits. 3/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

1/ 25 CFR 2.19(a) requires that an Area Director "render written decisions in all cases appealed to [him] within 60 days after all time for pleadings (including all extensions granted) has expired." It is possible that a decision in the appeal from the Superintendent's July 22, 1993, payment demand has been stayed pending resolution of the present appeal.

2/ The administrative record contains a May 21, 1993, BIA memorandum suggesting a belief that the Area Director could make his decision final for the Department so that it "cannot be appealed to IBIA [the Board], but will necessitate appeal directly to the federal Court of Appeals" (Emphasis in original). The Area Director is reminded that he lacks authority to make his own decision final for the Department or to place it into immediate effect. See 25 CFR 2.6(a); 43 CFR 4.314(a); Stuart v. Acting Billings Area Director, 25 IBIA 282, 289-90 (1994); Narconon Chilocco New Life Center v. Acting Anadarko Area Director, 25 IBIA 273, 276 (1994).

3/ All notions not addressed are hereby denied.